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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,989	08/21/2001	Michael H.B. Stowell	06618-045002	8355

7590

04/29/2003

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EXAMINER

MULLIS, JEFFREY C

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 04/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/934,989

Applicant(s)

STOWELL ET AL.

Examiner

Jeffrey C. Mullis

Art Unit

1711

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 2,3,5,6 and 8.Claim(s) objected to: 11 and 17.Claim(s) rejected: 1,4,9,10 and 12-16.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Jeffrey C. Mullis  
J Mullis  
Art Unit: 1711

Art Unit 1711

ATTACHMENT TO ADVISORY ACTION

Applicants' arguments filed 04-08-03 have been fully considered but they are not deemed to be persuasive.

Applicants' amendment has not been entered since claims 13-16 would not refer to preceding claims in the alternative only and would therefore be improperly multiple dependent.

With regard to the rejection under 35 U.S.C. § 112, second paragraph applicants argue that this term is defined in a dictionary of medical terms made available at "Cancer Web". However the only definition cited by Cancer Web is that for blood, not for "formed elements". The term "formed elements" is not indicated as a definition but rather the terms "formed" and "elements" are separate and the section cited by applicants in fact further clarifies the term "formed elements" as being red blood cells, white blood cells and platelets. The term "formed elements" could mean a number of things based on the definitions provided at the website for Cancer Web.

With regard to the rejection under 35 U.S.C. § 112 first paragraph and the issue of the phrase "membrane is associated with an acidic compound capable of modifying the pH of the fluid", this rejection is withdrawn. However with regard to the issue of "stabilizing the lipid vesicle", no argument by applicants has been presented and this rejection pertaining to this phrase has been maintained. With regard to the term "formed

Art Unit 1711

elements" and the rejection under 35 U.S.C. § 112 first paragraph, it is not clear that this term is necessarily limited to blood, but in any case applicants' original disclosure merely refers to plasma and it is not clear that whole plasma was intended.

With regard to the rejections under 35 U.S.C. § 102, applicants' arguments rely upon the after final amendment which was not entered for the reasons set out above. Therefore the rejection under 35 U.S.C. § 102 has been maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (703) 308-2820. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (703) 308-2462. The fax phone number for this Group is before final (703) 872-9310 and after final (703) 8729311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2351.

J. Mullis:cdc

April 25, 2003

Jeffrey Mullis  
Primary Examiner  
Art Unit 1711

